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Director
Operations 1
Anti-Dumping Commission
GPO Box 1632
Melbourne VIC 3001

Investigation into rod in coil exported from the Peoples Republic of China

Dear Director,

This submission is made on behalf of Jiangsu Shagang Group Co., Ltd, (Shagang) in response to the Commissioner's recent decision to publish a preliminary affirmative determination (PAD) and impose provisional measures applying to exports of rod in coil (RIC) by Shagang from the Peoples Republic of China (China).

It is noted that the Commissioner has opted to establish normal values for the purposes of the preliminary determination using Shagang's domestic sales. However, upon review of the Commissioner's calculations, Shagang has identified a number of issues and errors which indicate that the preliminary dumping margin of 13.1% is significantly overstated. Had Shagang's preliminary dumping margin calculation been correctly and consistently determined, it is reasonable to expect that the Commissioner would not have been satisfied that there appeared to be sufficient grounds for the publication of a dumping duty notice, as the dumping margin over the investigation period would have been negligible.

Relevant export sales for determining export price

A review of the preliminary calculations reveals that the Commission has 'collapsed' the various production and domestic sales entities within the Shagang group and treated them as a single corporate entity for the purposes of establishing arms-length normal values. However, in determining arms-length export prices under subsection 269TAB of the *Customs Act 1901* (the Act), the Commission has not consistently applied the same approach to collapsing of Shagang's export sales entities.

Export prices have been established using sales between the Shagang related entities, [REDACTED] and [REDACTED], when the more appropriate and comparable sales reflective of arms-length transactions are those between [REDACTED] to the Australian customer, [REDACTED].

As demonstrated during the Commission's verification of Shagang's questionnaire response, sales between [REDACTED]

[REDACTED] [export sales circumstances] negotiated price with the Australian importer and customer, [REDACTED].

Like good sales used to establish normal values

The information submitted in Shagang's questionnaire response shows that during the investigation period, the goods exported to Australia were [REDACTED] [product type] RIC. However, on the domestic market in China during the investigation period, Shagang sold [REDACTED] [product type] RIC, [REDACTED] [product type] RIC and [REDACTED] [product type] RIC.

Shagang notes that for the purposes of the preliminary determination, normal value was determined under subsection 269TAC(1) of the Act using domestic sales of [REDACTED] [product type] RIC. Shagang submits that only domestic sales of [REDACTED] [product type] RIC ought to have been used to compare with export prices of [REDACTED] [product type] RIC, as they are the most comparable like goods sold on the domestic market and ensure a proper comparison between the established normal values and export prices. This is particularly important given that the average price of [REDACTED] [product type] RIC [REDACTED] [pricing information] RIC.

Further, the Commission's normal value calculations are based on a limited subset of like goods with no clear or identifiable factor for determining whether and which particular domestic transactions were relevant and suitable for determining normal value. For example, some domestic sales of [REDACTED] [product type] RIC of diameter up to 14mm were defined as 'Not goods' in the normal value calculations. This included sales to both related and unrelated customers. There is no basis for such sales being excluded from the normal value determination given that they clearly fall within the parameters of the goods description and meet the definition of like goods. On the other hand, the Commission has strangely classified domestic sales of [REDACTED] [product type] RIC in diameters exceeding 14mm as 'Goods' and included these transactions in the normal value calculations.

Shagang repeats that the Commission's preliminary normal value determination does not appear to reflect a consistent or logical basis for identifying which individual transactions within the total population of domestic sales of RIC, fall within the broader definition of like goods and further, which are properly classified as like models for the purposes of proper comparison with export sales.

Relevant costs for assessing ordinary course of trade

As highlighted above, the Commission's normal value calculations include domestic sales of [REDACTED] [product type] RIC sold in China during the investigation period.

Notwithstanding the view that only [REDACTED] [product type] domestic sales ought to have been used to compare with the exports of [REDACTED] [product type] RIC, it was at the very least incumbent on the Commission to ensure that the particular type or model of RIC was compared with its corresponding cost to make and sell. This is necessary to properly determine which domestic sales were profitable or recoverable for the purposes of establishing the population of sales sold in the ordinary course of trade.

This is the Commission's standard practice and confirmed in its Dumping and Subsidy Manual¹ which states '*[t]he sales price of each model for each transaction sold domestically is compared to the verified domestic*

¹ Dumping & Subsidy Manual, November 2015, pages 31-32

CTMS for that grade/model.' It adds '*[f]or those sales found to be sold at a loss and in substantial quantities, the selling price of each individual sale is compared to the weighted average cost to make and sell (WACTMS) calculated for that model during the investigation period.*'

A review of Shagang's preliminary normal value calculations reveals that the Commission relied only on the costs to make and sell for [REDACTED] [product type] RIC for assessing whether domestic sales were sold in the ordinary course of trade. That is, the quarterly and recoverable costs of [REDACTED] [product type] RIC were used to compare with the corresponding domestic sales of [REDACTED] [product type] RIC. It is clear that the approach adopted by the Commission for the purposes of the preliminary determination is inconsistent with its own stated practice and unreasonable given [REDACTED] [pricing information] RIC.

Adjustment for VAT on exports

As stated in the Commission's Preliminary Affirmative Determination Report 301 (PAD 301), domestic sales were adjusted upward by the amount of non-refundable VAT paid on export sales to Australia during the investigation period. The Commission explains that '*export sales have a tax burden that is higher by 8% (17% less 9%) and that is the reason for the upwards VAT adjustment.*'

Shagang submits that in applying the VAT adjustment, the Commission has not complied with its own stated policy and practice to ensure that due allowance is made 'for differences which affect price comparability'. The Commission's Dumping and Subsidy Manual clearly states that '*[a]djustments will be made if there is evidence that a particular difference affects price comparability.*' It adds that '*[a]djustments may be based upon actual costs incurred, or selling prices achieved, for the sales transactions under examination. Where based on costs it is subject to the principle that adjustments will be made only where evidence indicates that price comparability has been affected.*' [emphasis added]

Given that the non-refundable amount of VAT paid on exports are simply selling expenses, Shagang contends that the Commission is obliged to firstly establish that these expenses have affected the corresponding export prices and as such, price comparability. This is confirmed by the Commission's recent interpretation and consideration of an adjustment claim for differences in taxes relevant to certain hollow structural sections exported from Thailand².

In that case, the exporter claimed an adjustment was warranted for taxes incurred and relevant only to domestic products which results in '*[p]roducts sold in the Thai domestic market are priced higher in order to recover the duty-related costs and Thai domestic prices are higher than Australian prices for the matching group of products.*' In response, the applicant in that case and this rod in coil investigation, OneSteel Manufacturing Pty Ltd argued the adjustment claim ought to be rejected as:

- domestic prices cannot be used to support a claim for an adjustment based on alleged cost differences as such a claim ignores the factors such as supply, demand, economic conditions, profit and market power in addition to cost, that influence the formulation of prices in particular markets, and
- the exporter had been unable to adequately demonstrate that a price differential was evident between domestic sales of HSS produced from imported and locally source HRC.

² EPR 254, Record no. 054, Final Report, pages 26-27.

In considering the various submitted views by interested parties and the requirements of the Act, the Commission explained the framework for determining whether such adjustments are warranted:

Subsection 269TAC(8)(c) of the Act provides that such an adjustment to normal value is only allowable where it established that normal value and export price of like goods are modified in different ways by taxes or the terms or circumstances of the sales to which they relate. That is, an adjustment should only be allowed when price comparability of domestic and export sales have been affected.

Therefore, in order to decide whether an adjustment is warranted, the Commission is required to establish whether the duties paid for the imported HRC that is used in manufacturing of domestically sold HSS has modified Saha Thai's pricing of like goods sold on the domestic market in contrast to the goods exported.

The Commission reiterated and confirmed its interpretation and position in its response to the Anti-Dumping Review Panel's review of the decision relating to hollow structural sections exported from the Kingdom of Thailand³.

Shagang agrees with the positions outlined by the applicant and the Commission in respect of the required elements to be determined before an adjustment can be made. Specifically, a mere cost difference between domestic and export goods is not sufficient to justify adjustment without a demonstrable affect/impact on domestic and/or export sales such that prices cannot be properly compared. For that reason, Shagang contends that the Commission is obliged to establish whether the amount of non-refundable VAT paid on exports has impacted the relevant export sales in such a way as to affect comparability with the corresponding sales. However, it is noted again that the Commission's sole basis for making the adjustment in PAD 301 is that export sales have a higher tax burden, without any consideration or assessment of whether those taxes have flowed through to and affected export selling prices.

In Shagang's view then, the Commission has failed to comply with the requirements of the Act and its own stated policy and practice, by making adjustment for taxes which were not demonstrated to have impacted on export selling prices and as such, affected price comparability.

Conclusion

In conclusion, Shagang requests that the preliminary dumping margin determined in PAD 301 be re-assessed in light of the issues raised in this submission and verified information provided to the Commission following the making of the PAD.

Yours Sincerely

John Bracic

³ <http://www.adreviewpanel.gov.au/CurrentReviews/Documents/151105%20-%20Response%20to%20ADRP%20-%20Public%20File.pdf>